parent, and should that be the case the time for her gift may not fall within the required limits; the gift is therefore too remote. If X is alive at the time of the testator's death, then the only thing to happen is her reaching twenty-four, and as that must happen, if at all, in her lifetime, and she is alive at the testator's death, the gift to her cannot be too remote.

Let us now look at the case as it really arose, a gift under an exclusive power to G to appoint among his children, and an appointment by his will of independent sums to those of his daughters who should reach twenty-four, the daughters being some more and some less than three years at the time of his death. Of course the daughters under three could not take; could those more than three years old take? As the gifts are separable, the fact that there were or might be other daughters who could not take would not invalidate the gifts to those who were over three years of age. But were those gifts in themselves good?

If, to use the common phrase, the words of the appointment are read into the instrument creating the power, then we shall have the case we have just been considering, and the legacy to the daughters would be bad, except to those living when the power was created.

This phrase, however, is not in all respects correct. The word "daughters" should have given to it the meaning which the donee gave to it; that is, of certain individual girls, having in fact certain names and certain ages, *e.g.* A who is six years old, B who is five years old, C who is four years old, D who is two years old. But it must be observed that the being of these ages is not a condition which the donee has attached to the appointments. As the intention of the donee was to appoint to particular persons, those persons' names may be read into the creating instrument, but the qualities of those persons cannot be read into the creating instrument as conditions for the gift, unless the donee has made them so. Therefore if we call an appointee unborn at the time of the creation of the power X, it was not then certain that the gift to X, in the case we are considering, might not take effect beyond the required limits.

If the appointment had been to such of the donee's daughters as should be three years old at his death, upon their reaching twenty-four, the gift would have been good, because at the creation of the power no legatee answering the required description could possibly take at too remote a time.

Wilkinson v. *Duncan* therefore would seem to be wrong, and also, *a fortiori*, *Von Brockdorff* v. *Malcolm*, 30 Ch. D. 172, which professes to rest upon it; and the attempt in the *Addendum*, Gray, Perp., p. xxxiii, to support the latter case fails.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

ADMIRALTY — STATUTORY LIABILITY OF OWNER. — A steam-propeller was wrecked and abandoned to the underwriters as a total loss. It was subsequently taken in tow by a wrecking-master, but sank within twenty-four hours, and one

of the crew was drowned. *Held*, that the underwriter is liable. The propeller was still a "vessel" and he an "owner" within the meaning of the statute limiting the liability of the owner. And the restriction of the statute limiting the liability to vessels not "used in rivers or inland navigation" does not apply to a vessel used on the Great Lakes. *Craig* v. *Continental Ins. Co.*, 12 Sup. Ct. Rep. 97.

AGENCY — FELLOW-SERVANT — COMMON EMPLOYMENT. — The captain and each of the crew of a vessel are fellow-servants engaged in a common employment, so that the owner of a vessel is not responsible for an accident caused to the one through the negligence of the other. *Hedley* v. *Steamship Co.*, 40 W. R. 113 (Ct. of Ap.).

BILLS AND NOTES — ACCEPTANCE BY TELEGRAM. — The plaintiff telegraphed to the defendant, asking him if he would accept a check drawn on him. The defendant answered in the affirmative. *Held*, this is an acceptance in writing within a Missouri statute providing that no acceptance shall be good unless in writing. *Garretson* v. *North Atchison Bank*, 47 Fed. Rep. 867.

BILLS AND NOTES — PAYMENT OF FORGED BILL — DRAWEE INJURED BY NEGLIGENCE OF DRAWER. — A bank paid a forged check. The depositor was so negligent in informing the bank of the forgery that, in the ordinary case, he would be chargeable with the amount. *Held*, the bank, in order to take advantage of this negligence, must show that it has been injured by it. *Janin* v. *London & S. F. Bank*, 27 Pac. Rep. 1100 (Cal.).

CARRIERS — LIABILITY IN TORT FOR EJECTION — SUNDAY LAW. — Where plaintiff, having bought a ticket, is wrongfully put off defendant's train, he can recover, although his contract for transportation was void under the Sunday statute. His action sounds in tort for "the violation of a personal right secured by the law," "in a certain sense independent" of the contract, although originating from it. *Chicago, St. L., & P. R.R. Co.* v. *Graham*, 29 N. E. Rep. 170 (Ind.).

CONFLICT OF LAWS — BILLS OF EXCHANGE — PAROL ACCEPTANCE. — An agreement made in Missouri by a resident of Illinois to accept and pay drafts at his place of business in Illinois is governed by the law of the latter State, to the exclusion of the Missouri statutes. And in Illinois such a parol promise is binding on the acceptor. *Hall* v. *Cordell*, 12 Sup. Ct. Rep. 154.

CONFLICT OF LAWS — INTEREST ON BOND AFTER MATURITY. — Bonds of a South Carolina railroad company, made payable in pounds sterling, and both principal and interest to be paid at a designated banking-house in London, are sued on. It appears that the holder has for several years after maturity accepted interest at the English rate. The question is whether interest after maturity is to be paid at the rate paid in England or in South Carolina. *Held*, that the English rate is to be paid. The form of the bond raises such a presumption, which is made conclusive by the receipt of that rate for several years. *Coghlan* v. *So. Car. R. Co.*, 12 Sup. Ct. Rep. 150.

CONSTITUTIONAL LAW — EMINENT DOMAIN — GRADE CROSSINGS. — Where a railroad corporation, formed under the general railroad law, locates its route so that its line crosses the route of another railroad, the law gives it the right to decide for itself whether it will cross such other road at grade or otherwise. The only limitation upon this right is that it shall not unduly impair either the safety or the reasonably fair enjoyment of the road whose route is crossed. *Jersey City N. & W. Ry. Co.* v. *Central R.R. Co.*, 22 Atl. Rep. 728 (N. J.).

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — STATE TAXES. — A Maine statute requires every railroad corporation in the State to pay "an annual excise tax for the privilege of exercising its franchises," the amount of the tax to be determined according to a sliding scale proportioned to the average gross earnings per mile within the State for the year preceding the levy of the tax. *Held*, that the method of determining the amount of the tax is merely a way of ascertaining the value of the privilege, and does not render the tax a tax upon the receipts themselves; and hence, in its application to railroads which enter the State from another State or Canada, the act does not operate as a regulation of interstate or foreign commerce — Bradley, Harlan, Lamar, and Brown, JJ., dissenting. *State of Maine* v. *Grand Trunk Ry. Co.*, 12 Sup. Ct. Rep. 121. Diss. Opinion, 12 Sup. Ct. Rep. 163.

CONSTITUTIONAL LAW — OBLIGATION OF CONTRACTS. — There is no federal question involved in a decision of a State court upholding a statute which, by changing the terms of a contract between a city and a water works company, impaired the obligation thereof, within the prohibition of the federal Constitution, when it appears that the contract claimed to have been impaired was *ultra vires* and void, and had been so declared by the State court. *City of New Orleans* v. *New Orleans Water-works Co.*, 12 Sup. Ct. Rep. 142.

CONSTITUTIONAL LAW — TAKING PROPERTY FOR PUBLIC PURPOSE. — A statute which provides that land may be flowed for the purpose of fish culture is constitutional, as the taking of private property is for a public purpose. And a pond maintained for the culture of useful fish, though maintained only for the profit and benefit of the owner, is within the purposes of the act. *Turner* v. *Nye*, 28 N. E. Rep. 1048 (Mass.).

CONSTITUTIONAL LAW — WEAVERS' FINES ACT UNCONSTITUTIONAL. — The Weavers' Fines Act, passed by the Massachusetts Legislature of 1891, declaring that "No employer shall impose a fine upon, or withhold the wages, or any part of the wages, of an employé engaged at weaving, for imperfections that may arise during the process of weaving," is unconstitutional, as interfering with the inalienable right of "acquiring, possessing, and protecting property" guaranteed by the State Constitution, by restricting the necessarily incidental right to make reasonable contracts, and as impairing the obligation of contracts within the meaning of the federal Constitution. Holmes, J., dissents. *Com.* v. *Perry*, 28 N. E. Rep. 1126 (Mass.). See note on this case, 5 Harvard Law Review, 287.

CONTRACT — INSURANCE — CANCELLATION — WHEN TAKING EFFECT. — By a New York statute it is obligatory upon fire insurance companies to cancel any policy issued by them at the request of the insured. Plaintiff, who held a policy from defendant, wishing to cancel it, mailed the policy, together with a letter expressing his purpose, to defendant's agent. After the time of mailing, but before the time of receipt by the agent, plaintiff's house was burned. *Held*, in a suit upon the policy, that he could recover; the notice of termination of the policy took effect when received, not when mailed. *Crown Point Iron Co.* v. *Ætna Ins. Co.*; 28 N. E. Rep. 653 (N. Y. Ct. of App.).

The court distinguish these facts from the well-known case of the acceptance of an offer to contract (*Vassar* v. *Camp*, 11 N. Y. 441), by saying that there was here no element of contract. But *quære* whether this explanation explains.

CONTRACTS — MUTUAL CONSENT — OFFER OF REWARD. — A person who has captured a thief for whose apprehension a reward has been offered is entitled to the reward, although he made the capture in ignorance of the offer. *Williams* v. *Carwardine*, 4 B. & Ad. 621, followed. *Everman* v. *Hyman*, 28 N. E. Rep. 1022 (Ind.).

CONTRACTS — DELAY FROM STRIKE — REASONABLE TIME. — The obligation of a consignee of a cargo, under a bill of lading, which contains no specified limit of time for unloading, is to unload within a reasonable time after the arrival of the ship at the port of discharge, and the reasonableness of the time is to be measured by the circumstances existing at the time of the unloading. *Held*, accordingly, that a consignee of cargo under a bill of lading, who, through no act or default of his own, but owing entirely to a strike of laborers at the port of discharge, did not unload for nearly one month after the ship's arrival, was not liable to the ship-owner for damages for detention of the ship. *Hick* v. *Rodocanachi*, 40 W. R. 161 (Ct. of Appeal).

By terms of a charter-party in which the port of discharge was specified, the cargo was "to be discharged with all despatch as customary." *Held*, that the effect of the charter-party was to render the charterers liable for delay occasioned by a strike of laborers at the port of discharge during the unloading of the cargo. *Castlgate Co.* v. *Dempsey* (1892), 1 Q. B. 54.

CRIMINAL LAW — ALIBI — REASONABLE DOUBT. — Under the defence of an *alibi* it is sufficient if there is enough evidence to produce a reasonable doubt as to the presence of the prisoner at the killing. *Adams* v. *State*, 10 So. Rep. 106 (Fla).

A stricter rule is required in some jurisdictions, viz., that the prisoner must establish his *alibi*, if not beyond a reasonable doubt, at least by a preponderance of evidence, to entitle it to any weight. *State* v. *Beasley*, 50 N. W. Rep. 570 (Ia.).

CRIMINAL LAW — FALSE PRETENCES — CONTRIBUTORY GUILT. — One who obtains money by false pretences is liable to punishment, though the person from whom it was obtained parted with it in furtherance of an illegal purpose to obtain by fraud valuable land from the United States. *Cummins* v. *People*, 27 Pac. Rep. 887 (Col.).

This decision is directly contrary to that of the leading case of *McCord* v. *People*, 46 N. Y. 470. The New York rule is followed in Wisconsin. *State* v. *Crowley*, 41 Wisc. 271. On the other side, and in accord with the Colorado case, are the leading cases of *Com.* v. *Morrill*, 8 Cush. 571, and *Com.* v. *Henry*, 22 Pa. St. 253.

EQUITY — INJUNCTION — RESTRAINING ACTION AT LAW. — A agreed to build a piece of road for $29,000, with the right to retain possession thereof and run it for his own benefit until that sum was paid. After completing the road and before receiving full payment, he was forcibly dispossessed by the officers of the railroad company, and brought an action of forcible entry and detainer in the District Court. Pending this action he entered into a written stipulation with the company that the sum due under the contract was $25,000. Judgment was rendered in his favor. Seven months later the company's successor tendered A $25,000, with interest to date, which A refused. This bill is to enjoin A from taking possession under his judgment. *Held*, that the agreement was a settlement of the amount due A, and on payment into court the complainant was entitled to the injunction prayed. Lamar, J., dissenting. *St. Louis, I. M., & S. Ry. Co.* v. *Johnson*, 12 Sup. Ct. Rep. 124.

EQUITY — SETTING ASIDE CONVEYANCE — INSANITY — MARRIAGE. — Defendant, by fraud and undue influence, obtained from plaintiff, an insane person, conveyances and transfers of all his property; and the next day she persuaded plaintiff to go through the form of marriage with her. *Held*, that a bill would lie by plaintiff, through his guardian, to avoid such conveyances and transfers, although proceedings which had been instituted to annul the marriage had not yet been decided in plaintiff's favor, and although she was, therefore, still his wife. *Lombard* v. *Morse*, 29 N. E. Rep. 205 (Mass.).

ESTOPPEL — HOLDING OUT — LIABILITY — TORT. — A traction engine, to which the name and address of the owner were affixed, was let on hire by the owner for three months. Owing to the negligence of the hirer while driving it along the highway, the plaintiff, who was in a carriage, was injured. *Held*, that the owner was not liable. Lord Esher, commenting on *Stables* v. *Eley*: "If that case decides that a person who sends out a carriage with his name upon it holds himself out as being responsible to any one injured by it through the negligence of the driver, I think it was wrongly decided. The highest that that case can be put on as an authority is that the name being affixed to the carriage is *prima facie* evidence of the liability of the person whose name is so affixed as owner; but that *prima facie* liability may be rebutted by evidence." *Smith* v. *Bailey*, 40 W. R. 28 (Ct. of App., Eng.).

EVIDENCE — DAMAGES — COLLATERAL MATTER. — In proceedings by a city to condemn a water-right which is not being utilized, evidence of the amount recently paid by the city for a similar neighboring water-right is incompetent. *In re Thompson*, 28 N. E. Rep. 388 (N. Y.).

Authority is very evenly divided upon this question. In Massachusetts, New Hampshire, Illinois, Iowa, and Wisconsin such evidence is admitted; Pennsylvania, New York, Georgia, and California agree with the principal case.

INFANCY — RIGHT OF NEXT FRIEND TO COMPROMISE. — An action of tort was brought by plaintiff's father as next friend. At the trial defendant offered to show, in bar of the action, an executed accord and satisfaction between himself and the father. *Held*, that evidence upon this point was rightly excluded. Such a settlement, made for less than the full amount of the infant's demand, is beyond the power of the next friend, and will not bind the infant unless it is confirmed by the court, or unless, with the approval of the infant's counsel, final judgment is entered in accordance with it. — *Tripp* v. *Gifford*, 29 N. E. Rep. 208 (Mass.).

INSURANCE — QUASI-CONTRACT. — A married woman, having insured her life in the defendant company by a policy made payable to her children, died childless. *Held*, that the defendant was not liable for anything to any one at law;

possibly in equity the administrator of the insured might recover the amount of premiums paid. *McElwee* v. *New York Co.*, 47 Fed. Rep. 795.

There would seem to be a good quasi-contract here upon which the defendant might be charged in equity for the full amount of the policy, on the same principle which permits a recovery upon a lost or destroyed bill or bond.

QUASI-CONTRACTS — RIGHT OF SON AGAINST A PARENT'S EXECUTOR FOR SUPPORT OF THE DECEASED. — Where a son presented a claim against his mother's executor for board, attendance, support, etc., furnished by the son to the mother during the latter's lifetime: *held*, that such services, on account of the relationship, are presumed to have been furnished gratuitously, and that such presumption can only be rebutted by clear proof of an agreement between the parties for compensation. *Wilkes* v. *Cornelius*, 27 Pac. Rep. 135 (Ore.).

The court do not seem to have had in mind the leading New Hampshire case of *Sceva* v. *True*, 53 N. H. 627, which holds what is conceived to be the true rule, that, if the claimant in such cases performed the services with the expectation of being remunerated, he is entitled to recover. In this view, it is immaterial whether or not there was an express agreement between the parties.

PROPERTY — RIPARIAN RIGHTS — MILL-SITE. — The owner of a mill-site at which a mill was formerly operated, but which had not been in use within six years of the time of bringing the action, cannot recover for the injury to the mill-site or water-power caused by the defendant's diversion of the waters of the stream, although entitled to nominal damage for the diversion itself. *Clark* v. *Pennsylvania R.R. Co.*, 22 Atl. Rep. 989 (Pa.).

PROPERTY — SEPARATE ESTATE FOR UNMARRIED WOMAN. — A use for the sole and separate benefit of a woman who, at the time of its creation, was neither married nor in immediate contemplation of marriage, is void; and a separate estate effectually created at the time of a woman's first marriage will not revive for her protection under a second marriage. *In re Quinn's Estate*, 22 Atl. Rep. 965 (Pa.).

The case is of especial interest as tracing the development of the doctrine and contrasting the law in Pennsylvania, as here declared, with that held in England.

REAL PROPERTY — COVENANTS RUNNING WITH THE LAND. — Where A conveyed a way over her premises to a railroad company, in consideration of one dollar and the company's covenants to build a railroad, run daily trains, and erect a depot, and A subsequently assigned to B, and the company later abandoned the roadbed: *held*, that the covenants did not directly benefit the land and did not run. *Lyford* v. *North Pac. R. Co.*, 27 Pac. Rep. 103 (Cal.).

REAL PROPERTY — EASEMENTS — ALTERATION OF THE EASEMENT. — Where defendant is the owner of an easement to run water in an open ditch over the plaintiff's land, and undertakes to lay pipes in the ditch of no greater carrying capacity than the ditch, even though the change would be less burdensome to the plaintiff and more convenient to defendant, nevertheless the alteration would tend to substitute a new and different easement and will be enjoined. *Allen et al.* v. *San José Land & Water Co. et al.*, 27 Pac. Rep. 215 (Cal.).

REAL PROPERTY — EASEMENTS — RIGHT OF REVERSIONER TO SUE. — Defendant company built an elevated railroad through the street upon which plaintiff's land abutted, but did not condemn the easement of light, air, and access appurtenant to that land. Plaintiff subsequently let the land for a term of years. Later, while thus out of possession, plaintiff brings action for disturbance of his easement. *Held*, that he could recover, because of the diminution of the rental value of the land. *Semble*, that the lessee would have no action. A different case, however, would be presented if the lease had been made before the construction of the railroad. *Kernochan et al.* v. *N. Y. El. R.R. Co.*, 29 N. E. Rep. 65 (N. Y.).

REAL PROPERTY — EQUITY OF CONTRACT RUNNING WITH THE LAND. — Defendant contracted for the purchase of a lot in a fashionable quarter of Brooklyn, directly behind plaintiff's premises, and announced his intention to build on it a seven-story flat. Plaintiff bought off defendant's contract, paying $6,000 more than the market value of the lot in consideration of defendant's agreement to erect no such building anywhere in plaintiff's neighborhood. Defendant forthwith bought the lot opposite, began to build a flat on it, conveyed it to his wife, who had notice of the contract, and went on with the building as her agent. *Held*, that a bill by plaintiff would lie against defendant and his wife, to enjoin

the completion of the building. Plaintiff's equity attached from the moment of the purchase, to any land in the neighborhood bought by defendant, and ran with the land when that passed into the hands of a subsequent purchaser with notice. — *Lewis* v. *Collner et al.*, 29 N. E. Rep. 81 (N. Y.).

REAL PROPERTY — EXECUTORY DEVISE. — The testator by his will devised real estate to his son for life, and after his death to all the children of his son, whether then or thereafter to be born, who should attain twenty-one. He declared that his son should not have any power to sell or dispose of his life estate, and in case his said son should attempt to sell or dispose of the same, or become bankrupt, or the estate should be taken in execution by any process of law for benefit of any creditor, then he declared that the devise to his son should immediately become void, as if such son were then actually dead, and that the estate so devised to him should thenceforth vest in the persons who under the devises before mentioned would be next entitled. The son's interest was taken on execution, and consequently became void. *Held*, that in order to carry out testator's intention, the gift over must be construed, not as a contingent remainder, but as an executory devise, so as to enable all the son's children in existence at the date of the order, or born, or to be born thereafter, to share in the property on their attaining twenty-one. *Blackman* v. *Fysh*, 39 W. R. 520 (Eng.).

Devise, subject to a life estate, to the use of such child or children of the said E. D. "as either before or after the death of the said E. D." should attain the age of twenty-one. *Held*, an executory devise (following *Lechmere* v. *Lloyd*, 18 Ch. D. 524). *Dean* v. *Dean*, 39 W. R. 568 (Eng.).

TORT — SEDUCTION — LOSS OF SERVICE. — The Statute of Limitations begins to run against an action for damages by a parent for the seduction of a child from the moment of seduction, and not from the time of loss of services. *Dunlap* v. *Linton*, 22 Atl. Rep. 819 (Pa.).

TORTS — TROVER — PLEDGE — PROPERTY IN THE GOODS. — Goods were shipped under a bill of lading which provided that they, the goods, were to be delivered to the order of the consignor or his assignees. The invoices were sent to the consignee and a bill of exchange for the price drawn by the consignor on the consignee, which, together with the bill of lading endorsed in blark, was sold and delivered by the consignor to his bankers, with a hypothecation note authorizing the bankers to retain the bill of lading and sell the goods if the consignee either declined to accept the bill of exchange, or failed to pay it at maturity.

The goods, on the arrival of the ship, were deposited by the ship-owner with the defendants, a railway company, to be delivered up on order of the ship-owners. The consignee of the goods, who had accepted the bill of exchange and paid the freight, induced the defendants wrongfully to hand over the goods to him without his producing either the bill of lading or any delivery order from the ship-owners. At a subsequent date, when the bill of exchange was about to become payable, the consignee requested the plaintiffs, who were his bankers, to pay it and debit his account therewith. The plaintiffs accordingly paid the bill of exchange and received it and the bill of lading from the consignor's bankers, and also obtained a delivery order from the ship-owner; but when they presented these to the defendant company, it was discovered that the latter had already given up the goods to the consignee.

In an action for damages for the non-delivery of the goods by the defendant to the plaintiffs: *Held*, that the plaintiffs were pledgees at law of the goods, and as such could maintain an action of trover or detinue against the defendant company for non-delivery of the goods; and the fact of the wrongful delivery of the goods having occurred before the accrual of the plaintiff's title afforded no ground of defence to the action. *Bristol Bank* v. *Midland R.R. Co.*, 40 W. R. 148 (Ct. of App. Eng.). See note, p. 347.

WILLS — TESTAMENTARY COVENANTS — VALIDITY. — A voluntary covenant in writing that the covenantor's executors shall, after her death, pay to the covenantee a certain sum is not contrary to the policy of the laws of Massachusetts. The reasons do not apply which underlie the statute requiring three witnesses to a will. *Krell et al.* v. *Codman*, 28 N. E. Rep. 578 (Mass.).